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NO. 10-1071

IN THE

Supreme Court of the United States

Reza Ahmadi

Appellant, *Petitioner,*

VS.

THE STATE OF TEXAS

Appellee, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FOURTEENTH DISTRICT OF TEXAS AT HOUSTON

PETITION FOR REHEARING

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Hon. Don Stricklin	Judge of the 337th District Court, Harris County, Texas

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PETITION FOR REHEARING

Petitioner [referred to herein as "Ahmadi"] submits this petition for rehearing pursuant to this Court's Rule 44.2 because of "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented". Ahmadi filed Petition for Writ of Certiorari (Docket Case No. 10-1071) on January 5, 2011. Certiorari was denied by this Court on April 4, 2011.

STATEMENT OF THE CASE

An indictment in Cause Number 1118773, filed in the 337th District Court of Harris County, accused Ahmadi of Theft in an amount over $200,000, alleging Dennis Leahy as the victim (CR-2).[1] Also indicted, and tried together with Ahmadi, was Nereo Garza. A jury found Ahmadi guilty as charged (CR -58, RR IX-4). The jury assessed punishment at confinement for seven years in the Texas Department of Criminal Justice, Correctional Institutions Division, plus a $5000 fine (CR-65). Ahmadi gave timely notice of appeal (CR-70). The appellant presented three points of error. The Court of Appeals affirmed the judgment of the trial court in a memorandum opinion. A motion for rehearing was overruled. Pursuant to an extension of time, the appellant timely filed a petition with the Texas Court of Criminal Appeals for discretionary review. This Court refused discretionary review on October 6, 2010. Appellant filed a Motion for Rehearing of Appellant's Petition for Discretionary Review. This motion was rejected on October 25, 2010. The Court of Appeals

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1 The clerk's record in Cause Number 1118773 is designated as "CR I." The reporter's record from the consolidated trial of Ahmadi and Garza is designated "RR."

extended the time for filing a petition for writ of certiorari with the United States Supreme Court.

GROUNDS FOR REHEARING

This prosecution arose from an allegation that Ahmadi, who was the owner of a computer repair company, stole money from Hewlett Packard through the administration of a computer repair contract for the St. Agnes School in Houston.[2] Ahmadi and Nereo Garza were tried together, and each was convicted.

The appellant maintains that the evidence was legally insufficient to show that he had intent to defraud anyone, either at the School or at Hewlett Packard. The evidence failed to show that Ahmadi was aware of, let alone promoted, any theft by codefendant Garza, who controlled the day-to-day repair operation and the related paperwork.

The appellant –petitioner seek petition for Rehearing of all four issues presented, for reasons set forth below.

A. Cause in Fact and Proximate Cause

In most cases, the applicable standard of legal causation is "proximate cause." For violation of the Texas Deceptive Trade Practices Act and

2 The named complainant, Dennis Leahy, was a security official for HP.

selling defective products, the applicable standard of legal causation is "producing cause."
In Ford Motor Co. v. Ledesma, 242 S.W.3d 32, 45 (Tex.2007).The court held that the proper definition of "producing cause" is "that cause which, in a natural sequence, was a substantial factor in bringing about an event, and without which the event would not have occurred."
The HP defective laptops caused the injury or revenue loss to itself or another. In other words, the defective laptops were a "cause in fact" of the injury. However, the Defendant is also arguing that the defective laptops were the "proximate" or "legal" cause of the injury.
Defendant provides that the negligent conduct of HP is a:

.....legal cause of harm to itself and to another if

(a) HP's conduct is a substantial factor in bringing about the harm, and

(b) There is no rule of law relieving the actor from liability because of the manner in which HP's negligence has resulted in harm, economic loss to itself or another

Intervening and Superseding Cause

The defendant argues that there has been an intervening and superseding cause.
An "intervening force is one which actively

operates in producing harm to self or another after the actor's negligent act or omission has been committed. The intervening cause must also be superseding.

For example, if a seller further along the chain of distribution is negligent for failing to make an inspection that seller's liability does not absolve the manufacturer from having to make its own product inspection. *See Vandermark v. Ford Motor Co.* 391 P2d 168 (Cal 1964), automobile manufacturer no absolved of liability for negligent even though the dealer had the final duty to inspect for defects in the car. However, if a seller does make an inspection, discovers a manufacturing defect, and yet does nothing either to correct the problem or to warn public, many courts hold that the seller's conduct is so gross that it is an intervening and superseding cause. The manufacture would not be liable in such a situation. *See Mc Laughlin v. Mine Safety Appliances Co.* 181 NE2d 430 (NY 1962).

Similarly, in this case HP a manufacturer and seller of laptop computers, sold laptops to St. Agnes Academy High School in late 2000. Intelligent Interface "I.I." a warranty dealer for HP, further along the chain distribution was brought into the St. Agnes for supporting HP's laptops repairs. After defendant was brought into

the account, defendant observes the high repair, defendant visits similar private high schools with the same laptop program, defendant discovers the same or worse problem. Defendant testified that the laptops at other schools were stacking this high awaiting for parts for repair [3].

Defendant detects the defects, informs HP of his observation on the laptop issues [4].

In a few months into supporting the laptop program, defendant realized the seriousness of the problem at St. Agnes.

The defendant took the initiatives by contacting IBM via email that reads: "The situation and crisis at the St. Agnes School due to the HPs' high defective rate is getting worse", and "requested for IBM to get involved". IBM did get involved and took the account over. Once IBM laptops were deployed the School environment started to change.

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3 Ahmadi had said an HP audit showed other places having more claims than St. Agnes did (RR IV-27).

4 Garza, co-defendant said Keevin Lee talked to Garza as part of an investigation to see "why there were a lot of schools being replacing [sic] top, bottoms, hinges. Because they had a problem with a recall with the LCD screens breaking the top and bottom cover" (RR VIII- 113-114).

Warranty Claims Analysis at St. Agnes...
The number of HP warranty claims submitted from St. Agnes decreased dramatically from 3000 during Garza to 1300 after Garza's dismissal[5].
In 2005 Garza was dismissed during the summer and worked only for 6 months in that year;
(During Garza, 130 days, he claimed 3000) $\simeq$ 23/day
(Thereafter, 108 days School claimed 1300) $\simeq$ 12/day
IBM report shows, I.I. provided warranty service at St. Agnes for an average of $\simeq$ 2/day
The increase warranty claims from "2, IBM" to "12, Compaq" is 10 per day after Garza's dismissal.
Increase /original = 10/12 = 84%. Therefore, Compaq had 84% higher breakage rate than IBM after Garza's dismissal. The 84% breakage rate does not stand to the 6% average industry standard [6].

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5 Court of Appeals noted: "The number of HP warranty claims submitted from St. Agnes decreased dramatically once Garza's employment was terminated. According to Hyams's testimony, St. Agnes submitted approximately 1300 warranty claims after Garza's dismissal as compared to over 3,000 claims under Garza during 2005. Pham also stated that the number of warranty repairs decreased substantially once Garza stopped working for the school. Appellant argues the number decreased because the school switched to more reliable IBM laptops; however, there were still students using HP computers after Garza's dismissal. Appx. A. P.14-a

6 To regulate the acceptability of defects and to protect the end user, ISO have created a standard for manufactures to follow ISO 13406-2. All reputable manufactures conform to and support the ISO 13406-2 standard.

"Yet HP sold laptops to St. Agnes but never informed St. Agnes on the defectives [7] despite IBM substitution, nor did HP questioned St. Agnes on the high number of claims submission [8]"

Defendant's act by engaging IBM to replace HP disastrous products in early 2004, and supporting School with nearly one million dollars worth of staff services work, providing inventory parts, at no charge to school, compare to HP, that it did investigate the breakage with laptops,

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7 Cheryl Barr testified that she worked for Intelligent Interface, developing marketing programs (RR VII- 176-177). This brought her into contact with officials at St. Agnes and other schools, and they discussed the fact that schoolchildren "were less careful" with computers than adult users were and there would be a higher repair rate (RR VII-178).

8 Rose Ann Cook the supervisor over Garza testified that she never got any complaints from Compaq or HP about any problems with parts orders (RR V- 80-81).

No one came out from HP to explain that Garza and Pham were doing anything wrong at the C.A.V.E. (RR VI-65).

Jenny Theiss, "the warranty claims compliance" section of HP, told Cardenas in 2003 that more detailed reports were needed regarding the St. Agnes account, and Theiss insisted that "It was Intelligent Interface's responsibility" (RR VI-205). The question of who actually filled out the orders at St. Agnes were "not my concern," Theiss said, and she admitted that she did not know who actually filled them out (RR VI-206). Theiss said her concern was whether Intelligent Interface "met the terms and conditions" of its contract with HP (RR VI-205).

discovered laptop defects [9], and yet did nothing either to correct the problem by removing or replacing the units or to warn St. Agnes. Accordingly, Ahmadi argues that HP, the manufacture and seller's conduct is so gross that it is an intervening and superseding cause[10]. Regarding appellant relationship with Compaq and HP, Ahmadi said he was never told that his firm was doing anything wrong (RR VII-203). Meaning Compaq approved the daily parts submission, Compaq approved the payment for all the work done by I.I., Compaq did not warn or suspend services with I.I. Instead as defendant testified: Compaq awarded Intelligent Interface with All Star Plaque on many occasions during this time period, with letters of recognition that

9 Keevin Lee the HP "partner service delivery manager" told Theiss, that the particular Compaq computer provided to St. Agnes students had "a lot of defects, characterized as "product quality issues" (RR VI-217).

Michael Nolan, an investigator for the District Attorney's Office, testified that he had heard about class-action lawsuits which had been brought due to the high breakage rate for Compaq/HP laptops during this time period, but he did not know any details of the suits (RR VI-143).

10 *De Minimis* Contribution to the Social Harm – In some cases, if the defendant's voluntary act caused minor social harm compared to the social harm resulting from a substantial, intervening cause, the law will treat the latter as the proximate cause of the social harm.

reads: "Compaq is recognizing INTELLIGENT INTERFACE, INC. for performing exceptionally well in both Customer Satisfaction and Operational Performance." "Intelligent Interface has held "premier" status, the best category (RR V- 180-182)".

B. Intervening in a judicial process

When a state offered witnesses making a false testimony, it is consider to be committing perjury [11] during the trail that is conspiracy to overturn the course of justice, intervening in a judicial process and concealing benefits from illegal acts.

The head of School, Sister Jane Meyer during the trail testifies that, "I was surprised that Ahmadi did not charge school for the three weeks virus work performed". The facts are that Ahmadi not only invoiced St. Agnes Academy for the three weeks of work performed on the viruses, School also paid these invoices with the check.

The false statement made by Meyer to the juries under the oath is nothing but committing perjury and intervening with justice during the trail,

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11 Other useful cases on perjured testimony include *United States v. Valentine*, 820 F.2d 565 (2d Cir. 1987) (reversing conviction when AUSA mischaracterized grand jury testimony during trial), and *United States v. LaPage*, 231 F.3d 488 (9th Cir. 2000) (reversing conviction when AUSA tolerated perjury from central government witness).

conspiracy to overturn the course of justice, and intervening in a judicial process.

C. The judge's statements during voir dire which diluted the concept of proof beyond a reasonable doubt.

Appellant argues that he was not provided an opportunity for full and fair trial of his Fourteenth amendment claim, because the state courts did not apply the proper constitutional case law (instruction to jury), Fourteenth Amendment violation, the presence of intervening circumstances.

D. Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

The seizure of the IBM evidence, Fourteenth Amendment violation, the presence of intervening circumstances.

The law is clear: prosecutors must reveal information pointing toward innocence of men charged with crimes. The U.S. Supreme Court said in Brady v. Maryland (1963) that prosecutors must "**promote justice**", rather than giving priority to winning a case.

CONCLUSION

For all the foregoing reasons, petitioner respectfully requests the Court to grant his petition for rehearing.

Respectfully submitted
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CERTIFICATION UNDER RULE 44.2

Pursuant to this Court's Rule 44.2, Ahmadi hereby certify that this Petition for Rehearing is limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. Ahmadi hereby also certify that this Petition for Rehearing is presented in good faith and not for delay.

Dated: April 20th, 2011

/s/ Reza Ahmadi

Reza H. Ahmadi